

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 280 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

(No. 1 to 5 NO )

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VIDECON NARMADA ELECTRONICS L.

Versus

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Appearance:

MRS SWATI SOPARKAR for Petitioner

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CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 23/10/97

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ORAL JUDGEMENT

This is a petition filed by a Company namely, Videocon Narmada Electronics Limited for amalgamation of the Petitioner Company with Videocon International Limited, under Section 391 read with Section 394 of the Companies Act, 1956.

The Transferee Company having its registered office at Mumbai had taken the necessary proceedings in the High Court of Maharashtra and as per the statement

made by the learned counsel for the Petitioner, the said Court has already sanctioned the proposed Scheme of Amalgamation so far as the Transferee Company is concerned.

The Petitioner Videocon Narmada Electronics Limited, is engaged in the business of manufacturing and supplying panels and funnels for Colour TV Picture Tube in technical collaboration with M/s. Techneglas, USA.

Videocon International Limited, the Transferee Company is engaged in similar line of business with much wider product range which includes Colour Television, Audio Product Assemblies, Air Conditioners and many such Electronic goods.

Both the Companies belong to the same management group. The Transferee Company is the flagship Company of the group having turnover of more than Rs.1600 crores and profit of more than Rs.97 crores. The Transferor Company though has good growth prospects is suffering from the temporary liquidity crisis due to delayed commercial production and increased competition. The petition gives details of the advantages that would flow by virtue of the amalgamation of the two Companies.

The Scheme of Amalgamation has been approved by majority of more than 99.99 % of the shareholders present at the meeting convened for this purpose on 30th June 1997 in accordance with the order dated 30-4-1997 of this High Court.

It is also approved unanimously by all the secured and unsecured creditors of the Transferor Company present at the meeting convened for this purpose on 30th June 1997 in accordance with the order dated 30-4-1997 of this High Court.

After the petition was admitted, it was advertised in the newspapers and three shareholders have written letters to the Registry of this Court raising objections as to the exchange ratio fixed under the Scheme.

Notice of the Petition has been served upon the Central Government and Shri B.T. Rao, Addl. Central Govt. Standing Counsel and Shri. Haroobhai Mehta, Central Govt. Sr. Standing Counsel appearing for the Central Government has stated that, they have no objection in sanctioning the Scheme of Amalgamation. Notice of hearing of the petition has also been served

upon the Official Liquidator as required under 2nd proviso to Section 394 (1) of the Act and the Official Liquidator has filed his Report dated 26-9-1997 stating that, the affairs of the Transferor Company have not been conducted in the manner prejudicial to its members or to public interest.

I have heard Mrs. Swati S. Soparkar, learned counsel for the Transferor Company. She has pointed out that, three shareholders have addressed letters to the Registrar of this Court raising objections against the proposed Scheme of Amalgamation. On perusal of the objections raised, it is found that they pertain to the fixation of Exchange Ratio of the shares. It is pointed out by the learned advocate for the petitioner that, in all, the Petitioner Company has about 17 lac shareholders and that the exchange ratio has been fixed on the basis of the valuation report of an independent body viz.. ICICI Security and Finance Co. Ltd., one of the leading financial institution of the country.

The learned counsel for the Petitioner has submitted that the Supreme Court of India has dealt with this issued in the matter of Mihir H. Mafatlal V/s. Mafatlal Industries Limited (87 Company Cases, 792) in the following terms.

".. It has also to be kept in view that which exchange ratio is better is in the realm of commercial decision of well informed equity share holders. It is not for the Court to sit in appeal over this value judgment of equity shareholders who are supposed to be men of the world and reasonable persons who know their own benefit and interest underlying any proposed scheme. "

It has also further observed as follows:

"... We may also refer to a decision on Madras High Court in Kamala Sugar Mills Ltd. In re (1984) 55 Company Cases 308, dealing with an identical objection about the exchange ratio adopted in the scheme of compromise and arrangement. The Court observed as under:

"... Once the exchange ratio of the shares of the transferee company to be allotted to the shareholders of the transferor company has been worked out by a recognised firm of Chartered Accountants who are experts in the field of valuation, and if no mistake can be pointed out

in the said valuation, it is not for the court to substitute its exchange ratio, especially when the same has been accepted without demur by the overwhelming majority of the shareholders of the two companies or to say that the shareholders in their collective wisdom should not have accepted the said exchange ratio on the ground that it will be detrimental to their interest. "

These observations in our view represent the correct legal position on this aspect."

In view of this, the objections raised by the three shareholders are overruled for the following reasons:

(1) Out of more than 17.00 lacs shareholders only about 3 shareholders have raised objections.

(2) In the meeting of the shareholders only one shareholder has voted against the scheme and the scheme was approved with majority having more than 99.99 % of the shareholders voting in favour of the scheme.

(3) No scientific basis has been pointed out by any objector to dispute the exchange ratio fixed by the petitioner company which is based on the report of an expert body.

(4) There is no material on record of this Court to even remotely suggest that exchange ratio worked out by an expert is unfair or improper or on some wrong basis.

(5) The objections raised by the objectors pertain more to the present market value of their shares vis a vis their expectations.

(6) The Bombay High Court has already sanctioned the scheme of amalgamation of the petition of the Transferee Company.

Having heard Mrs. Soparkar, learned counsel for the petitioner, and having gone through the petition, I am satisfied that amalgamation would be in the interest of the Petitioner Company and its members and its creditors. Under the circumstances the Scheme of Amalgamation is sanctioned. The prayers in terms of Para-20(A) are granted.

The petition is disposed of accordingly. So far as the costs to be paid to the Central Government Standing

Counsels are concerned, I quantify the same at Rs.5500/in  
one set to be paid to the Counsel Shri. B.T. Rao.

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